

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**DOCKET NO. 3:93-CR-134-2-FDW**

UNITED STATES OF AMERICA                          )  
  )  
  )  
vs.    )  
MICHAEL MACK,                                      )  
  )  
Defendant.    )  
  )  
\_\_\_\_\_

**MEMORANDUM  
OF DECISION**

In this matter before the Court for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 706 of the U.S.S.G. (made retroactive by Amendment 713), the Court makes the following findings and conclusions:

1. Defendant is eligible for a sentence reduction to a period of confinement equal to 168 months as to Count One (plus a consecutive sentence of 60 months as to Count Four) for the reasons set forth in the Supplement to the Presentence Report.
2. In the case of a defendant who has been sentenced to a term of imprisonment “based on a sentencing range that has subsequently been lowered by the Sentencing Commission,” 18 U.S.C. § 3582(c)(2) provides that the Court *may* reduce the term of imprisonment “after considering the factors set forth in section 3553(a) to the extent they are applicable” and if such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission. In the Commentary to U.S.S.G. § 1B1.10, the Sentencing Commission emphasized that the decision to grant a sentence reduction authorized by retroactive amendments is discretionary and that retroactivity does not entitle a defendant to a reduced term of imprisonment as a matter of right.
3. The full record before the Court reflects a defendant who personally assumed a violent role

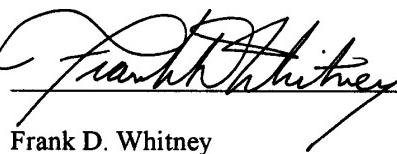
in an otherwise violent drug conspiracy in which firearms were regularly carried or used and one victim died. Furthermore, while Defendant has made some efforts toward rehabilitation while incarcerated, his disciplinary record (including a citation for possession of a dangerous weapon) demonstrates a continuing refusal to conform to the law.

4. Upon consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a), the possible threat to public safety posed by the early release of a person with this defendant's criminal predispositions, and this defendant's post-sentencing conduct, the court finds:

- a. That the defendant should receive some benefit from the retroactive application of Amendment 706, but that a reduction to 168 months is inappropriate in light of the very serious offense conduct and Defendant's numerous infractions while incarcerated; and
- b. That a sentence of **200 months** as to Count One (together with a 60 month consecutive sentence as to Count Four) is adequate, but no greater than necessary, to accomplish the objectives of 18 U.S.C. § 3553(a), while a further reduction would frustrate those objectives; and
- c. That this sentence is within the amended guidelines range.

An appropriate Order shall issue separately.

Signed: December 8, 2008



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Frank D. Whitney  
United States District Judge

